IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

CRL.A.No. 1535 of 2006()

AGAINST THE ORDER IN CRL.LP.224/2006 Dated 29/05/2006
AGAINST THE ORDER DATED 14/06/2005 IN CC.58/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

.....

APPELLANT: COMPLAINANT:

SILPI AGRO TECH (P) LTD.,
40/7334, "V" PENTA SQUARE, M.G. ROAD, ERNAKULAM,
REPRSENTED BY SALES EXECUTIVE BINIL DAS.

BY ADV. SRI.T.H.ABDUL AZEEZ
SRI.T.B.HOOD

RESPONDENTS: ACCUSED:

---

1. M/S. PARATHODU FEEDS AND
MINERALS AGENCIES, PARATHODU-685 571, IDUKKI.

2. JOY BABY,
MANAGER, M/S. PARATHODU FEEDS AND MINERALS
AGENCIES, PARATHODU-685 571, IDUKKI.

3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY FOR R1 AND R2, ADV. SRI.JOSE JOSEPH ARAYAKUNNEL
FOR R3 PUBLIC PROSECUTOR, SRI.THOMAS JOHN AMBOOKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Crl. Appeal No. 1535 of 2006 (A)

Dated this the 15th February, 2007.

JUDGMENT

The complainant in C.C.No.58/2002 on the file of the Judicial Magistrate of the First Class-I, Ernakulam, is the appellant. The complaint, preferred under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate of the First Class-I, Ernakulam, was dismissed, on the ground that neither the complainant nor his counsel were present, when the case was taken up, on the appointed date. Challenging the dismissal, the complainant is before this Court, through this appeal, on obtaining leave.

2. The counsel for the appellant submits that the date of posting was noted by the clerk of the advocate wrongly and, therefore, there was no representation when the case was taken up.

3. After hearing on the matter, I am of the opinion that an opportunity be given to the parties, to raise their respective contentions in the best interest of justice. Therefore, I set aside the impugned order dated 14/06/2005 and restore C.C.No.58/2002 to the file of the Judicial First Class Magistrate Court-I, Ernakulam,.

4. The parties shall appear before the court below on 14/03/2007. The learned Magistrate shall give an opportunity to the parties to adduce evidence and, dispose of the same, at the earliest, in any case, within three months from the date of appearance of the parties, before the court below.

The appeal is allowed as above.

J.M. JAMES,
JUDGE.

ms